IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 23871 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHUBEN NARAYANDAS DAVANI
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR HR PRAJAPATI for the Petitioner
Mr Neeraj Soni, Assistant Government Pleader for the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 27/06/2007

ORAL JUDGMENT

Rule. Mr Neeraj Soni, learned AGP waives service of Rule for the respondents. At the request of the learned counsel for the parties, the

matter is taken up for final hearing today.

The petitioner has approached this Court to obtain certain orders from this Court to quash and set aside order dated 16.02.2004 passed by respondent No.3 canceling the retail licence granted in favour of the husband of the petitioner, which has been confirmed in appeal by respondent No.2 vide order dated 7.4.2004 and further confirmed by respondent No.1 in revision application by order dated 2.9.2004. It is the say of the petitioner that her husband was granted the licence to run fair-price shop at Fatehpura in the city of Vadodara. Upon certain irregularities having been detected by the concerned officer during inspection, show-cause notice was given to the husband of the petitioner calling upon him to explain why the licence should not be terminated. One of the irregularities which was noticed was that the husband of the petitioner had not issued ration cards to 67 persons and in the course of investigation their statements were also recorded. The authorities below found that there was substance in the charge and considering the seriousness of the same, the licence was required to be terminated. In view of such finding the licence was terminated by respondent No.3 by order dated 16.2.2004. Against the said order, the husband of the petitioner preferred appeal before respondent No.2, which was also dismissed by order dated 17.04.2004. He, therefore, preferred revision application before respondent No.1. On 14th July 2004 the husband of the petitioner expired. The petitioner informed respondent No.2 and 3 about the demise of her husband. She was, therefore, called upon to produce certain documents so that licence running in the name of her late husband could be transferred in the name of the petitioner. The petitioner produced the documents and requested for continuing of the licence. However, the request was not granted on the ground that the licence granted in the name of her husband was already terminated and

the revision application filed by him was also dismissed by respondent No.1 vide order dated 2.9.2004.

It is the say of the petitioner that at the revisional stage those 67 persons filed affidavit that they had received the ration cards and they were given the necessary quota of the commodity. However, revisional authority, that is, respondent No.1 rejected the application on the ground that the affidavits were filed at a belated stage and they were not required to be considered.

It is the submission of Mr Prajapati, learned advocate for the petitioner that the affidavits filed by 67 persons clearly show that there was no substance in the allegation made against the husband of the petitioner. He has further submitted that while recording the statements during inquiry the procedure prescribed was not followed. As against that, Mr Neeraj Soni, learned Assistant Government Pleader has submitted that since the irregularity committed by husband of the petitioner was of a grave nature, the authorities were justified in terminating his licence.

Having considered the rival submissions and having perused the record of this petition, it appears that the affidavits which were filed on behalf of the petitioner were required to be considered by the revisional authority and it ought not to have discarded them on the ground that they were filed at a belated stage. The deponents of the said affidavits had stated on oath certain facts that could have helped the husband of the petitioner or the petitioner. The revisional authority should have, at least, done the exercise to ascertain whether the contents of the affidavits were true. In view of the same, it appears that the petitioner be given adequate opportunity to submit her case in light of the affidavits filed by 67 persons. In my opinion, the ends of justice will

meet if the following directions are given:-

(1) The impugned orders stated above are quashed and set aside. Respondent No.3 is directed to reconsider the case on the basis of the affidavits that are produced on record and take appropriate decision after granting adequate opportunity of personal hearing to the petitioner.

(2) The intimation of hearing to the petitioner to be given one week in advance.

(3) The petitioner may be permitted to produce any other document if she intended to place them on record in support of her case.

(4) Respondent No.3 will thereafter take decision in accordance with law and on the merits of the case. The decision to be intimated to the petitioner within 15 days from the date of the decision. The entire exercise is to be completed on or before 31st October 2007.

Petition is allowed. Rule is made absolute with no order as to costs.

(Akshay H Mehta, J.)

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